

California Regional Water Quality Control Board
Santa Ana Region

April 15, 2005

ITEM: 20

SUBJECT: Administrative Civil Liability Complaint No. R8-2005-0021–
WDID NO. 8 33I010149, E L Yeager Construction Company,
Riverside County

BACKGROUND

On March 2, 2005, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2005-0021 (copy attached) to E L Yeager Construction Company. for alleged violations of the State's General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$3,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against E L Yeager Construction Company

ACL No. R8-2005-0021 was issued by the Executive Officer to E L Yeager Construction Company for failure to submit the annual report for the year 2003-2004.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$830), with the State Water Resources Control Board. E L Yeager Construction Company filed a NOI and obtained coverage under the General Permit, WDID No. 8 33I010149. E L Yeager Construction Company is located at 26th Street and Avalon Road in Riverside, CA.

The General Permit requires all facility operators to submit an annual report by July 1 of each year. Because the annual report was not submitted on time, a Notice of Noncompliance was issued on July 26, 2004. A second Notice of Noncompliance was issued on September 2, 2004. Both letters were received by the addressee. The Notices of Noncompliance requested submittal of the completed annual report to the Board office by September 17, 2004, with a statement explaining why the

annual report was not submitted by the July 1 deadline. The second notice also warned the discharger of the mandatory penalty for failure to submit the annual report.

The facility violated the California Water Code and the Clean Water Act. The facility was repeatedly given notice to comply with the General Permit.

E L Yeager failed to submit the required annual report to the Regional Board office within 60 days from the date of the first Notice of Non-compliance. Section 13399.33(c) of the California Water Code Requires that a mandatory penalty shall be imposed by the Board for an amount that is not less than one thousand dollars (\$1,000) for failure to submit the annual report.

Additionally, Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

The facility is alleged to have violated the General Permit for 273 days (from July 1, 2004 to April 1, 2005). The maximum liability for this violation is \$2,730,000. Section 13385(e) specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

Nature, Circumstances, Extent and Gravity of Violation

By submitting the NOI, the discharger certified that it would comply with the provisions of the permit. The General Permit requires that an annual report be submitted to the Board office by July 1 of each year. Despite several reminders, E L Yeager Construction Company failed to submit the report in a timely manner. The discharger was aware of the requirement to submit the annual report by July 1.

Ability to Pay the Proposed Assessment

The discharger has not indicated that he is unable to pay the proposed penalty.

Prior History of Violations

Board staff issued Notices of Non-Compliance for non-submittal of annual reports for 1995-96, 2000-01, 2002-03, and 2003-04. The facility has been late in submitting its annual reports and has submitted incomplete reports.

Degree of Culpability

The discharger violated the terms of the General Permit by failing to submit its annual report and failing to conduct and properly document its inspection and monitoring program. The facility did not respond in a timely manner to staff requests to submit the annual report. EL Yeager Construction Company has not been responsive to Board staff's efforts to bring the site into compliance.

Economic Benefit or Savings, if any, Resulting from the Violations

Cost savings from the late submittal of the annual report is estimated to be less than \$50.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, and the submittal of the annual report on March 18, 2004, staff recommends that the Board affirm the assessment of \$2,000 (this includes \$1,000 for the mandatory minimum penalty), specified in the Administrative Civil Liability Complaint issued by the Executive Officer on March 2, 2005.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2005-022
)	for
E L Yeager Construction Company)	Administrative Civil Liability
1995 Agua Manza Road)	
Riverside, CA 92509)	
)	
<u>Atten: Mr. James Moore</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on April 15, 2005 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2005-021, dated March 2, 2005, and on the recommendation for the imposition of administrative civil liability pursuant to California Water Code Sections 13385 and 13399.33 in the amount of \$2,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). E L Yeager Construction Company (hereinafter E L Yeager) is authorized to discharge storm water under the Permit, WDID 8 33I010149. The Permit requires E L Yeager to submit an annual report by July 1 of each year. E L Yeager did not submit the annual report by July 1, 2004. Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to E L Yeager, the first one on July 26, 2004 and the second one on September 2, 2004. These NNCs reminded E L Yeager that the annual report had not been received and that there is a mandatory penalty for non-submittal of the annual report. The second NNC required E L Yeager to submit the annual report by September 17, 2004.
2. E L Yeager failed to submit the annual report to the Board office within 60 days from the date of the original Notice of Noncompliance.
3. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) and Section 13385 allows the Board to assess additional penalties for violations of Waste Discharge Requirements.
4. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not exceed ten thousand dollars (\$10,000) for each day the violation occurs.

On March 1, 2005, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2005-021 to E L Yeager, proposing that the Board impose civil liability in the amount of \$3,000 on E L Yeager for the violations cited above. The complaint further proposed that \$1,000 of this amount would be suspended if the annual report were received by March 18, 2005.

5. The annual report was submitted on March 18, 2005 and logged in on March 21, 2005.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13385(c) and 13399.33(c), administrative civil liability shall be imposed on E L Yeager, in the amount of \$2,000 as proposed in Complaint No. R8-2004-021 for the violations cited, payable as set forth below.

1. E L Yeager shall pay the entire amount due to the State Water Resources Control Board by May 16, 2005.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 15, 2005.

Gerard J. Thibeault
Executive Officer

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2005-0021
)	for
E L Yeager Construction Company)	Administrative Civil Liability
P.O. Box 87)	
Riverside, CA 92502)	
)	
<u>Atten: Mr. James Moore</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 and 13899.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's regular meeting on April 15, 2005 at the City Council Chambers of Loma Linda, 25541 Barton Road, Loma Linda, CA 92354. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. E L Yeager Construction Company (hereinafter E L Yeager), 26th Street and Avalon Road in Riverside, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). Your facility's WDID Number is 8 331010149. The General Permit requires you to submit an annual report by July 1 of each year.
5. Because the annual report was not received by Board staff by the July 1, 2004 deadline, a Notice of Non-Compliance (NNC) was issued to E L Yeager, by certified mail, on July 26, 2004. The return receipt showed it was received on August 5, 2005. When Board staff received no response to the first NNC, a second NNC was issued on September 2, 2004, again by certified mail, and was

received on September 19, 2004. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by September 17, 2004.

6. To date, the Board has not received the annual report. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2004.
7. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. Based on non-submittal of the 2003-2004 Annual Report, the facility is alleged to have violated the General Permit 242 days (from July 2, 2004 to February 28, 2004). The maximum liability for this violation is \$2,420,000.
9. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a mandatory, minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes that civil liability be imposed on E L Yeager in the amount of \$3,000 (of this amount, \$1,000 will be suspended if the annual report is received by this office by March 18, 2005) for the violation cited above. This amount includes the mandatory minimum penalty of \$1,000.

March 2, 2005

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount of the penalty proposed under Paragraph 10. The bottom portion of the invoice, the waiver form, and the check or money order should be mailed to Sacramento in the enclosed envelope.

If you have any questions, please contact Milasol Gaslan at (951) 782-4419, or contact the Regional Board's legal counsel, Jorge Leon, at (916) 341-5180.

3/2/05
Date



Gerard J. Thibeault
Executive Officer